In the Supreme Court of the United States

No. 70-78

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, et al,

Petitioners,

- vs. -

UNITED STATES OF AMERICA,

Respondents.

ANITA REYOS, et al,

Petitioners,

- vs. -

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE and VERL HASLEM,

Respondents.

BRIEF FOR RESPONDENT VERL HASLEM

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QUESTIONS PRESENTED

Respondent Verl Haslem, being dissatisfied with the "Questions Presented" by petitioners, and pursuant to Rule 40, paragraph 3, of the Rules of the Supreme Court of the United States, herewith sets forth a revised set of "Questions Presented." However, since this respondent is not concerned with several of the issues raised in these proceedings, the issues enunciated will only be those to which this brief is addressed.

1. Was the Court of Appeals correct in requiring each plaintiff herein, individually, to prove a cause of

action and damages before being entitled to recover, and as a part thereof:

(a) Was the Court of Appeals correct in holding that a bank, which had contracted to act as transfer agent, depositary and bookkeeper for a corporation formed to hold assets belonging to mixed blood Indians, acquired no additional duties of a quasi fiduciary nature to the stockholders of that corporation, all of whom were mixed blood Indians.

(b) Was the Court of Appeals correct in holding that an employee of a bank such as the one described in Question 1.(a), above, is not clothed with the duties of his employer of which he has no knowledge so as to subject him to personal liability for a breach thereof.

(c) Was the Court of Appeals correct in holding that the individual defendants did not have sufficient connection with most of the transactions to subject them to personal liability for damages resulting therefrom.

2. What are the legal elements necessary to prove a cause of action in a suit for money damages under §10(b) of the Securities Exchange Act of 1934 (15 USC §78j(b)) and Rule 10b-5 of the Securities and Exchange Commission (17 C.F.R. 240.10b-5).

3. What is the measure of damages for recovery by a seller of securities who has suffered a loss as the result of a violation of §10(b) and Rule 10b-5.

STATEMENT OF THE CASE

This brief is submitted on behalf of respondent Verl Haslem in response to the brief of petitioners, Affiliated Ute Citizens of the State of Utah and Anita Reyos, et al.

The petitioners have joined together for purposes of this review two separate and distinct cases, only one of which pertains to Haslem. The first case, *Affiliated Ute Citizens of the State of Utah v. the United States of America,* 431 F.2d 1349 (1970) (herein "the AUC case") seeks the remedy of having certain properties distributed pro rata to the individual mixed blood members of the Ute Indian Tribe rather than to a corporation formed to receive it. The second case, *Anita Reyos, et al v. First Security Bank of Utah, N.A., the United States of America, John B. Gale and Verl Haslem,* 431 F.2d 1337 (1970), (herein "the Reyos case") claims damages on behalf of certain enumerated mixed bloods. The latter case is divided into three claims: the first is a claim against the United States under the federal Tort Claims Act (28 U.S.C., §1346(b)) by which petitioners allege that the government negligently failed to protect the mixed bloods in breach of an alleged duty to do so; the second is a claim against the bank for breach of an alleged fiduciary relationship; and the third consists of claims against the bank, Haslem and Gale based upon an alleged violation of Sec. 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78j(b)) (herein "§10(b)") and Rule 10b-5, promulgated thereunder by the Securities and Exchange Commission (17 CFR 240.10b-5) (herein "Rule 10b-5").

Haslem takes no position with respect to the first case, nor with respect to the first claim against the United States in the second case. Except to assert that the Court may not clothe him with responsibility therefor, Haslem only incidentally argues the merits of the second claim in the second case. The substance of this brief will be addressed to the claims against Haslem based upon the claimed violations of §10(b) and Rule 10b-5.

At the outset, it should be pointed out that petitioners' Statement of the Case contains a number of inaccuracies, particularly in the form of general statements which do not apply to Haslem. These errors are carried over into the Argument portion of the petitioner's brief and are amplified, so that the conclusions reached by petitioners are substantially weakened when viewed in the light of true facts as revealed by the Record herein.

Thus, at the risk of redundancy, the facts pertaining to Haslem, and some of the inaccuracies of Petitioners' brief, will be set forth here.

This case involves an attempt by eight-five "mixed blood" members of the Ute Indian Tribe to recover damages for the alleged wrongful activities of the defendants which, the petitioners claim, resulted in their receiving less than full value for their shares of stock in the Ute Distribution Corporation. The case before the Court actually involves only twelve of the eighty-five named plaintiffs, the twelve being so-called "bellwether" plaintiffs (A. 19).

Th eighty-five "mixed blood" members of the Ute Indian Tribe sued on two counts. The first count, which asked for relief only as against the defendants First Security Bank of Utah, N.A., John B. Gale and Verl Haslem, was based upon a claimed violation of §10(b) and Rule 10b-5. The second count, which asked for relief only as against the Bank and the United States of America, claimed that these defendants were negligent in discharging their statutory, contractual and quasi-fiduciary duty to the plaintiffs (A. 17).

For ease of reference, First Security Bank of Utah is sometimes herein referred to as "First Security," or "Bank," the defendant United States of America is re-

ferred to as "the U.S." or "the Government," and the Securities Exchange Act of 1934 is referred to as the "'34 Act."

It is of some significance, as later noted herein, that the case was initiated as a class action under Rule 23, Fed. R. Civ.P. (R. 1); however, as the case was finally postured in the Third Amended Complaint and the Pre-Trial Order, the class action theory was abandoned and the case was brought under the joinder provisions of Rule 20, Fed.R.Civ.P. (R. 369, 500).

Because of the many plaintiffs and the varying fact situations affecting each one, it was determined that only twelve "bellwether" plaintiffs' cases would be tried initially (Pre-Trial Order, A. 19), with the expectation that the decision would be appealed before the balance of the cases were tried (Tr. 1216-1218).[1] Consequently, this appeal involves only those twelve bellwether plaintiffs.

The litigation arose out of the sale by the plaintiffs of their stock in the Ute Distribution Corporation (herein sometimes "UDC"), a Utah corporation formed for the purposes and under the circumstances hereafter outlined. In 1954, Congress passed Public Law 671 (25 U.S.C. §§677-677aa), terminating the responsibility of the United States for rendering certain services to the mixed blood members of the Ute Indian Tribe. After the termination date specified therein, the mixed bloods became subject to the laws of the U.S. and the various states in which they resided.

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[1]In numbering the pages of the Record, the Clerk of the District Court for the District of Utah numbered all pleadings and exhibits in Volumes I through X as Record pages 1 through 1971, and numbered the trial transcript in Volumes XI through XVIII as Transcript pages 1 through 1223. Accordingly, whenever the portion of the record referred to has not been reproduced in the Appendix, the designation "R." will be used to mean pages from the first ten volumes, and the designation "Tr." will be used to designate pages in Volumes XI through XVIII. Citations to the Appendix follow the practice adopted by Petitioners.

Public Law 671 called for the partition and distribution of the assets of the Ute Tribe between the Tribe and the mixed bloods. Certain of those assets were not susceptible of actual partition and distribution, such as the mixed bloods' undivided interests in claims against the U.S. and in possible mineral interests in the Tribal lands. Accordingly, Ute Distribution Corporation was formed into which all such assets belonging to the mixed bloods were transferred. At the time of the formation of UDC, there were 490 mixed bloods on the rolls of the Bureau of Indian Affairs, and each received ten shares of the company.

The date the Government's responsibility for the mixed bloods terminated was August 27, 1961, but the Articles of Incorporation of UDC, which were approved by the U.S. Department of the Interior, provided that there could be no sale of the stock of UDC prior to August 27, 1964, unless the shares were first offered to the Ute Tribe and its members. If the offer was not accepted by any of the offerees, then the mixed blood could sell his shares to anyone he desired, but only for an amount, and on terms, equal to or better than those for which the shares had been previously offered. After August 27, 1964, the requirement of a prior offer expired and the mixed bloods were then free to trade their shares to anyone they saw fit and for any price which was acceptable to them (Ex. 16A, E. 6).

Both the Government and the officers and directors of UDC believed that certain services should be rendered by a bank or trust company, and as a result, certain agreements were entered into between First Security and UDC by virtue of which the Bank became the depository and transfer agent for the company and its bookkeeper, in effect (Ex. 18, E. 13-15). The Bank also

became a trustee for some of the mixed bloods under an express Trust Agreement (Exs. 17-A, 17-B, R. 1380-1400). Most of the beneficiaries of the trust were minors, although eleven adults who "were in need of assistance in the conduct of their affairs" were also beneficiaries. The determination as to who fell into that category was made by the Secretary of Interior (A. 411). The defendant Haslem had nothing to do with the negotiations or conferences concerning the drafting, implementation or approval of any of these agreements. After the agreements were executed by the parties, the Bank and UDC together decided on a manner for implementing the methods for transferring the stock, making the prior offer to the Tribe and its members, and seeing to it that the transfers could be consummated (Tr. 565-615, A. 274-300).

The procedure decided upon was as follows:

1. At such time as a mixed blood decided to sell his stock, he was required to execute an offer of sale to the Tribe at a specific price per share and a form was provided for this purpose (Ex. 50, E. 37). Haslem had nothing to do with the preparation of this form (A. 206-209).

2. After the form of offer had been posted in a manner agreed to between the Bank, the Government and the UDC for a period of thirty days and there was no acceptance thereof, the mixed blood could sell his shares to anyone he desired on the same or better terms as set forth in the posted offer. Neither the Tribe nor any of its members ever purchased any shares offered by a mixed blood (A. 253-4).

3. When the mixed blood had arranged the sale of his shares, he was required to sign an affidavit in which

he specified the amount he received for his shares and the name of the person who purchased them. The form of the affidavit (Ex. 72-A, E. 97) was agreed to by the Government and the UDC. Haslem had no hand in preparing this form.

Steps 1 through 3, above, did not apply after August 27, 1964, and mixed bloods could then sell their stock without the right of first refusal in the Tribe or its members. (A. 207-8, Ex. 16A, E. 1412).

4. At the suggestion of the attorney for the UDC, the Bank, the Government and the UDC agreed that the Bank should retain all of the UDC stock certificates in its office at Salt Lake City. The actual assignment of the shares was accomplished by means of a stock power on a form commonly used (A. 288). Haslem took no part in the decision to handle the stock transactions in this manner.

5. The affidavit and the stock power, once executed, were then submitted to the Superintendent of the Ute and Ouray Reservation (hereinafter referred to as the "Superintendent"), who issued his certificate (Ex. 50, E. 37) that the law respecting the transfer of the shares had been complied with and that the shares could then be transferred on the books of the corporation to the new owner (A. 207). Haslem took no part in preparing the form of certificate (A. 207-228).

6. The Bank then caused new stock certificates to be made out in the name of the new owner and submitted them to the office of the UDC for the signatures of the president and secretary and to have the corporate seal placed on the certificates. The certificates were then delivered to the new owners (A. 298).

First Security had an office in the town of Roosevelt, Duchesne County, Utah, and this office was used by the mixed bloods to conduct much of their business in connection with the transfer of the UDC stock. Haslem was one of two assistant managers at the Roosevelt office and as such performed some services to aid the mixed bloods in some of the transfers of their stock (A. 276). His activities will be more fully discussed. No one from the bank ever discussed any trust or fiduciary duties with Haslem except as to express trust accounts (A. 287, 460-61).

During the period involved in this litigation, mixed bloods sold 1,387 shares of their stock in UDC. Of these shares fifty were purchased by Haslem, all of which were purchased after August 27, 1964, when there was no requirement that the shares first be offered to the Tribe. Gale purchased 63 shares, some before and some after August 27, 1964 (A. 523). Attached hereto as Appendix "A" is a schedule showing in summary form each transaction involving the twelve bellwether plaintiffs taken from the Trial Court's Findings of Fact (A. 474-499). It shows that Haslem purchased only six of the 122 shares sold by the twelve bellwether plaintiffs, and for those six he paid cash. Since his shares were all purchased after August 27, 1964, there were no posting or affidavit requirements nor was it necessary to obtain a certificate from the Superintendent.

Haslem was a notary public and was also authorized to guarantee the signature of persons whom he knew on stock certificates and stock powers. If he received any fees for notarizing documents, the fees went to the Bank (A. 462). There is no evidence that Haslem worked in concert with any other defendant in his dealings in the UDC stock. Virtually all of the evidence presented con-

cerning transactions in which Haslem was involved (other than as a purchaser, either for himself or for others) indicates that he only performed ministerial duties in the course of his employment and pursuant to his employer's instructions.

The Trial Court determined that Haslem and Gale devised a "plan of [sic] scheme" to obtain UDC stock from mixed bloods and to "aid and abet" others in acquiring such stock for their own profit and for the profit of others (A. 527). Prior to so finding, however, the Trial Court had specifically found that in the great bulk of the transactions here involved neither the Bank, Gale nor Haslem had anything to do with the negotiations concerning them and received nothing from them (A. 474-499). (See Appendix "A" to this Brief.)

Nevertheless, the Trial Court found that the Bank, Haslem and Gale had collectively violated certain fiduciary duties as well as duties of disclosure to the plaintiffs (A. 534-535). Because of this finding, the Trial Court held the Bank, Haslem and Gale jointly and severally liable to *all* the twelve bellwether plaintiffs for violation of §10(b) of the '34 Act and Rule 10b-5, notwithstanding Haslem's lack of involvement in all but two of the thirty-two transactions.

The Trial Court then determined the "true value" of the shares sold by the plaintiffs on the date of each sale as $1,500 and measured the damages by the difference between that figure and the selling price for each share.

The result was a judgment in favor of the twelve bellwether plaintiffs and against the Bank, Gale and Haslem, jointly and severally, for $129,519.56.

Haslem, Gale and the Bank (and the United States) appealed the decision. The Court of Appeals ruled that the United States had no duty to the mixed bloods under the Termination Act which it had breached and reversed the judgment against the government under the Tort Claims Act. The Court of Appeals further ruled that the agreements between the Bank and the UDC created no duty to discourage sales of stock or any "quasi-fiduciary" duty to the individual mixed bloods and since no duty was created, none was breached. Contrary to the assertion in petitioners' brief (p. 5) that the Court of Appeals ruled ". . . that the Bank and its officers had not violated Rule 10b-5," the Court of Appeals indicated that such a violation may have occurred, but the record was not sufficiently clear to support a judgment based thereon (431 F.2d at 1345 *et seq.*). The Court of Appeals indicated (p. 1347) that there were misrepresentations in some instances as to the prevailing price at which shares could be sold and that if the shares purchased were immediately resold at a higher price, these were misrepresentations of material facts. But the Court of Appeal's decision limits the liability of defendants Gale and Haslem to those transactions in which they were involved as a principal, ruling that in those instances where one of them acted solely as a notary public or a signature guarantor, or both, without more, there was not sufficient involvement to justify imposing liability. With respect to any misrepresentations made by the defendants, or any of them, the Court of Appeals ruled that in order to recover therefor the plaintiffs involved would have to show reliance and the causal connection between the particular defendant's act and the particular plaintiff's loss.

In addition, the Court of Appeals held that there was nothing in the record to support the Trial Court's

finding of a conspiracy, plan or scheme to violate any duties owed to the plaintiffs by any of the defendants (431 F.2d at 1348) and so the individual defendants, as well as the Bank, could not be held liable for sales of stock by mixed bloods in which sales they did not participate.

The Court of Appeals also ruled that the measure of damages in those cases where Rule 10b-5 had been violated was the difference between the market value of the shares or the price at which they were resold and the price paid therefor. The measure adopted by the Trial Court was held improper.

Certain "facts" described in petitioners' brief require clarification:

1. At page 9 of their brief the petitioners state that the BIA established the Bank as transfer agent and to assist the UDC as "business agent," citing a conclusion to this effect in the Findings of Fact (Pet. Brief, p. 9). The agreement referred to is set forth in the Exhibit booklet on pages 13 to 15. Petitioners' characterization of the Bank as "business agent" is misleading. Actually, the agreement provided that the Bank would act as transfer agent for UDC, as a depositary of its funds, as a bookkeeper for it and would perform such other duties as UDC requested. There was nothing in the agreement to indicate that the Bank would perform any advisory functions nor that it would assume any of the "quasi-fiduciary" duties which petitioners contend were assumed by the Bank. The agreement did not make the Bank a general fiduciary with respect to the mixed bloods.

2. On page 10 of petitioners' brief it is said that the "officers" of the Bank at its Roosevelt office "arranged for agents, usually used car dealers, who contacted the

Indians during periods of economic crisis, sometimes contrived . . . and sometimes already existent . . ." presumably to purchase stock. There is no evidence in the record that the defendant Haslem ever engagd in any such activities, or that he knew that such activities were engaged in, if they were.

3. At page 10 of their brief, petitioners state that "[S]uch market as ever existed for the UDC stock was largely maintained by the Bank officers for their out of state clients, at prices fixed by the Bank officers in Roosevelt and at its central office in Salt Lake City." On the contrary, the record indicates that most of the transactions involving the bellwether plaintiffs before the court were with persons living within the state of Utah (A. 474-499). Haslem was only involved in two of the thirty-three transactions whereby the bellwether plaintiffs sold their stock and he purchased only six of 122 shares sold by said plaintiffs. Haslem never maintained a market nor did Haslem, Gale or the Bank maintain a market. As indicated above, of the 1,387 shares of UDC stock sold, Haslem purchased fifty and Gale purchased sixty-three. Thus they were involved in less than 10% of the total transfers of shares.

4. The record does not indicate anywhere that in the few instances where Haslem acted as a notary public or guaranteed signatures that he had any knowledge concerning any irregularities connected with the transaction. In fact, with respect to the twelve bellwether plaintiffs, Haslem only notarized one affidavit in a transaction which involved the sale of five shares to one Wallace A. Davis by Stewart Eugene Reed (A. 495-6). The trial court expressly found that Haslem did not participate in the sales negotiations, received nothing from the sale and that there was no evidence that the seller re-

ceived less than the value for which he bargained (A. 496).

SUMMARY OF ARGUMENT

1. The Court of Appeals properly held that each plaintiff should be required to establish his cause of action individually against each defendant, reversing the holding of the trial court that *all* defendants were liable to all plaintiffs. Petitioners' attempt to reintroduce the confusion attendant at trial should not be allowed.

(a) The trial court seemed to treat the case as a class action under Rule 23, Fed.R.Civ.P., when in fact the case proceeded under the joinder provisions of Rule 20(a), Fed.R.Civ.P. This latter rule allows the trial court to try cases having similar factual situations as one case, but to give judgment in favor of plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities. The Court of Appeals, in accord with that distinction, rejected the trial court's findings and directed the court in any further proceedings to allow a plaintiff to establish his claim against the defendants. That disposition should be affirmed.

(b) Haslem did not engage in most of the activities upon which petitioners rely to establish liability, and so he cannot be held liable in those transactions in which he did not participate. No duty was imposed upon him solely by virtue of his employment by the Bank and he cannot be held liable on a peculiar theory of "respondeat-inferior."

(c) Regardless of whether this Court holds that a plaintiff need not be a purchaser or a seller or in privity of contract with the defendant in order to recover in a Rule 10b-5 action, a defendant must still be "directly

or indirectly" involved before he may be deemed liable and therefore must have sufficient "nexus" with the operative facts giving rise to liability. Haslem did not have the required nexus to be considered to have "directly or indirectly" participated in thirty of the thirty-two transactions involving the twelve bellwether plaintiffs and should not be held responsible therefor.

2. The Court of Appeals held that in any further proceedings the remaining plaintiffs should each be required to prove reliance and causation before being entitled to recover. Petitioners suggest that these elements should be eliminated as a requirement in suits brought under §10(b) and Rule 10b-5. However, these elements have been and should remain a limiting factor on a plaintiff's right of recovery for damages under Rule 10b-5. In those cases where it is difficult, if not impossible, to prove reliance, the very materiality of the fact involved may presume reliance, in which case materiality and reliance can be deemed to have merged. But in those cases where reliance ought to be shown, particularly in damage actions, there is no need to eliminate it. That is particularly true in this case.

3. The measure of damages to be applied in those instances where the trial court determines that §10(b) and Rule 10b-5 have been violated was fairly stated by the Court of Appeals to be the profit made by the defendant upon resale of the shares purchased from a given plaintiff or, if the resale was not at arms length, the difference between the purchase price and the prevailing market at the time of the purchase. The petitioners' attempt to value the shares based upon their version of the value of the underlying assets of UDC is so speculative that it must be disregarded. Also, the evidence simply does not support the proposition that the defendants'

activities, and particularly Haslem's activities, had any effect on the market whatsoever, and certainly not a depressant effect. Upon remand, the trial court should be instructed to apply the measure of damages enunciated by the Court of Appeals.

ARGUMENT

POINT I.

THE COURT OF APPEALS WAS CORRECT IN REQUIRING THAT EACH TRANSACTION BE EXAMINED TO DETERMINE WHICH DEFENDANT, IF ANY, CAUSED DAMAGE TO EACH PLAINTIFF INVOLVED AND THE EXTENT OF HIS OR ITS LIABILITY THEREFOR.

A. *The Court of Appeals Rectified the Procedural Confusion of this Case, Which Began as a Class Action Under Rule 23, Fed.R.Civ.P. But Ultimately Proceeded Under the Provisions of Rule 20(a), Fed.R.Civ.P., Which Governs Permissive Joinder of Parties. Petitioners Seek to Reintroduce the Confusion.*

Petitioners began this case as a class action under Rule 23, Fed.R.Civ.P. (R. 1-4). Its final posture, however, was not as a class action but as a series of claims joined together for trial under the provisions of Rule 20(a), Fed.R.Civ.P. (A. 369; A. 4). It appears that the resulting change left a residuum of confusion in the Trial Judge's mind, as the result of which he found the Bank, Haslem and Gale liable as to *all* transactions, when they were not even involved in many of them.

The confusion of the Trial Court may be partly explained when it is recalled that early law required a plaintiff to allege and prove a "joint tort" in order to join parties as defendants, because it was a necessary prerequisite to joinder that all defendants be liable for

the entire amount of any judgment entered. This rule was later broadened to include those situations where harm was created as a result of independent, separate, but concurring tortious acts of two or more persons even though such acts were probably not truly "joint torts," because the Court could impose joint and several liability for the damage caused by those wrongs. 1 Harper & James, Torts (1956), pp. 692-697. This commentator notes that it must be remembered that to have a truly "joint tort," the harm caused must be of an *indivisible* nature which is not practicably *apportionable*. Thus, in early law, the finding of liability against one joined defendant meant liability for all, by definition. As stated in 1 Harper & James, at page 695:

> The joint and several liability imposed on joint tort-feasors or independent concurring tort-feasors producing an indivisible injury is a 'substantive liability' to pay entire damages. *This differs from what may be described as a 'procedural liability' to be joined with other tort-feasors as defendants in a single action. An understanding of this distinction between the two concepts, and a recognition that one should not necessarily control or regulate the other but that each should be applied independently according to the facts of a case, is essential to a full grasp of the meaning of both and their relationship to each other.* [Emphasis supplied.]

Later procedural codes, particularly the present day Federal Rules of Civil Procedure, recognized that while defendants may be joined together for procedural expediency, such joinder does not require common judgments against all defendants so joined. As stated in the last sentence of Rule 20(a):

> Judgments may be given for one or more of the plaintiffs according to their respective rights

to relief, and against one or more defendants according to their respective liabilities.

So, as the Court of Appeals recognized, the claim of each plaintiff must be examined to determine which of the named defendants, if any, caused his damage, if any, which resulted from the sale of his stock.

Petitioners, in their brief, seek to gloss over and blur the activities of the Bank and the individual defendants so as to make it appear that all of the defendants are responsible for all of the operative facts which petitioners claim justifies finding liability. A closer examination of the record indicates that petitioners' claims are too ambitious.

B. *Most of the Claimed Violations Arose From Transactions With Which Haslem Had No Connection, and He Cannot Be Held Liable Therefor.*

Petitioners contend in Point I of their Argument that "the conduct of the bank and its officers violated Rule 10b-5." In the discussion which follows, the petitioners describe the "misconduct of the Bank and its officers" without so much as a nod in the direction of the problem of which individual was responsible for what conduct. The "misconduct" ascribed by petitioners to the defendants involves a number of activities summarized on pages 14-17 of petitioners' brief. However, Haslem, as the record reveals, had nothing to do with the following activities relied on by petitioners:

1. Devising the affidavit by which the Superintendent was advised that a mixed-blood's offer had not been accepted by the Tribe or its members.

2. The negotiation or execution of any contracts the Bank had with UDC.

3. Assuring the corporation (UDC) that the consideration received by the Indians was cash when it was not.

4. Circumventing the requirement (if there was one) that the Indians receive cash.

5. Withholding stock certificates from the mixed bloods.

6. Engaging in so-called "market-making" activities. (Haslem's activities, involving the purchase of fifty shares out of a total of 1,387 sold by the mixed bloods, could not be construed as a market-making operation, nor could the activities of Haslem and Gale combined. Together they purchased 8-1/3% of the stock sold by the mixed bloods. See *Chasins v. Smith, Barney & Co.*, 438 F.2d, 1167 at 1170, n. 4 (2d Cir., 1970) re definition of a market maker. It is difficult to see how Haslem could have affected the market price of UDC stock. There is no evidence that Haslem acted in concert with Gale, but even together they could not be considered "market-makers."

7. Any arrangements with used car dealers or anyone else to circumvent the government regulations.

8. Performing "significant steps" in implementing *each* of the "nonprincipal" sales. This contention appears to arise out of the fact that Gale and Haslem occasionally acted as notaries public on affidavits signed by the mixed bloods or guaranteed their signatures upon the transfer of their shares. Haslem did very little of this. Of the thirty-two transactions involving the twelve bellwether plaintiffs, Haslem had no connection, either direct or incidental, with twenty-five of them. In five of the other seven transactions, Haslem's sole connection was either as a guarantor of the signature of the seller (four in-

stances) or as both notary public and signature guarantor (one instance). (See Appendix "A" hereto.)

When the petitioners assert that the Bank and its officers notarized affidavits "known to be false," they speak too broadly, as the record does not reveal any instance where Haslem notarized an affidavit which he knew to be false. In the only transaction involving the twelve bellwether plaintiffs where Haslem acted as a notary public, the trial court expressly found that Haslem took no part in the negotiations or sale except as a notary public and a signature guarantor and received nothing from the transaction. The trial court further expressly found that the consideration given for the shares purchased appeared to be of fair value (A. 496).

But petitioners are not content to rely on the acts of Haslem to determine the liability of Haslem; they seek to hold him responsible to *all* of the plaintiffs. To do so (or even to hold him responsible for *some* of the transactions) they appear to apply some sort of doctrine which might be termed "respondeat-inferior." They seek to attribute to Haslem duties to the mixed bloods which they claim the Bank owed, but about which Haslem knew nothing (A. 523).

In this connection, it has become fairly well established that if a servant commits a tort within the scope of his employment, the master may be held vicariously liable. However, if the master commits a tort without the knowledge or consent of the servant, the servant is not thereby deemed vicariously liable. *Kotzman v. Condit,* 169 Okla. 422, 37 P.2d 412, 98 A.L.R. 290 (1934); see 1 Harper & James, Torts, 700, n. 53 (1956):

> But of course the servant or agent is not liable for the tortious acts of the master or principal,

> except when other principles of joint tort liability would make him so. This failure to impose joint and several liability, or in fact, any liability, where the tort is the master's alone, indicates once more that the liability relationships are not truly joint torts. Only in the case of common enterprises would the individually consummated tort of either party bind the other.

Petitioners also say that if Haslem is not liable on the theory of "respondeat-inferior" then he is liable because he was a participant in a conspiracy, scheme or plan to violate Rule 10b-5. There is no evidence, as the Court of Appeals correctly held, of the existence of any such plan or scheme or that Haslem had any part in or knowledge of such, and petitioners cite none.

Thus Petitioners claim too much for their facts as respects Haslem.

C. *Even If the Law as to Privity of Contract or Involvement as a Purchaser or Seller is as Contended by Petitioners, Haslem's Connection With Thirty of the Thirty-Two Transactions Involving the Bellwether Plaintiffs Was Not Sufficient "Nexus" to Expose Him to Liability.*

In an effort to induce the Court to hold the defendants Bank, Gale and Haslem liable to the plaintiffs under §10(b) and Rule 10b-5 in transactions where they were not involved, petitioners argue that this Court should not require, as a prerequisite to liability, that the plaintiffs be either a purchaser or a seller of a security or in privity of contract with the defendants. Petitioners urge this Court to reject the so-called "Birnbaum Doctrine" (*Birnbaum v. Newport Steel Corp.*, 193 F.2d 461 (2d Cir. 952) *cert. denied* 343 U.S. 956 (1952)).

The argument overreaches the facts of this case. In most of the individual transactions, Haslem was not a party nor was he connected with them in any way. (See Appendix "A" to this Brief.) In those cases where Haslem or Gale acted either as a notary public or as a signature guarantor, or both, without more, the Court of Appeals held they were not sufficiently involved to be held liable. In other words, in those cases they did not have sufficient nexus with the operative facts to justify holding them liable for any loss occasioned.

The applicable statute and rule provide as follows:

§10(b) provides:

> It shall be unlawful for any person, *directly or indirectly,* by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange —
>
> * * *
>
> To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. [Emphasis supplied.]

Rule 10b-5 provides:

> It shall be unlawful for any person, *directly or indirectly,* by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,
>
> (a) to employ any device, scheme, or artifice to defraud,
>
> (b) to make any untrue statement of a material fact or to omit to state a material

> fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
>
> (c) to engage in any practice, or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security. [Emphasis supplied.]

From the foregoing it is evident that a person must be "directly or indirectly" involved in the subject transaction before the statute is initially applied and if there is no such involvement no further inquiry need be made. Notwithstanding the use of the term "indirectly" it is submitted that that term still requires, as do the principals of general law, that the defendant Haslem must have a connection, or "nexus," with the operative facts giving rise to the violation of sufficient gravity to justify holding him liable. Any other rule would constitute guilt by association and has never been applied in Rule 10b-5 cases. The facts involved in the cases cited by petitioners are perfectly consistent with this position.

For example, regardless of what this Court may hold in *Manhattan Casualty Co. v. Bankers Life & Casualty Co.*, Docket No. 1159 (Oct. Term 1970) on appeal from *Superintendent of Insurance of the State of New York v: Bankers Life & Casualty Company*, 430 F.2d 355 (2d Cir., 1970), the facts, as gleaned from the opinion of the Court of Appeals, indicate that there the defendants were directly involved in the fraud complained of. In that case there was a complicated scheme to permit certain individuals to acquire all of the outstanding stock of Manhattan Casualty Co. by the use of that company's assets. The suit was brought derivatively on behalf of Manhattan Casualty Company under Sections

17(a) of the Securities Act of 1933 (the "'33 Act") (15 U.S.C. §77q(a)), 10(b) of the '34 Act and Rule 10b-5. All parties to the actual sale of the stock of Manhattan Casualty were fully informed as to the fraudulent scheme, and the claimed fraud was actually practiced by the purchasing defendants on the board members of Manhattan Casualty to induce them to approve transactions which would permit the scheme to work. Regardless of whether this Court deems the defendants' activities there to come within the purview of Sections 17(a) and 10(b) of the respective statutes, there is no question that such activities were connected with the fraud. The "nexus" is plainly evident.

Petitioners also rely upon *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970). There a merger was prevented because of omissions of material facts in a proxy statement sent to shareholders in violation of Sec. 14(a) of the '34 Act (15 U.S.C. 78n (a)). The defendants clearly were responsible for the operative facts giving rise to the relief afforded by the Court. The same is true of the Texas Gulf Sulphur cases (*SEC v. Texas Gulf Sulphur*, 401 F.2d 833 (2d Cir., 1968); *Mitchell v. Texas Gulf Sulphur*, ... F.2d ...., CCH Fed. Sec. L. Rep. ¶93,019 (10th Cir. April 26, 1970)).

Thus it is apparent that Haslem cannot be held responsible for any loss suffered in transactions with which he had no, or only nominal, connection because he was not involved "directly or indirectly" and the Court of Appeals was correct in so holding.

POINT II.

THE COURT OF APPEALS PROPERLY RULED THAT RELIANCE AND CAUSATION WERE PROPER ELEMENTS TO BE PROVEN BEFORE PLAINTIFFS COULD RECOVER IN ANY DIRECT TRANSACTION WITH DEFENDANTS.

The Court of Appeals indicated that in some instances where the bellwether plaintiffs sold their stock there were misrepresentations as to the prevailing price. The Opinion indicates, correctly, that the record does not always reveal whether a particular plaintiff was in fact damaged thereby. The Court of Appeals further ruled that the record fails to show that any of the plaintiffs who dealt with the named defendants relied upon any such misrepresentations or that there was a causal connection between such misrepresentations and the damages, if any, suffered. The opinion held that such showings were essential to plaintiffs right to recover.

Petitioners argue that reliance as an element should be dispensed with in Rule 10b-5 actions, stating, at p. 32 of their brief:

> The task confronting this Court is to determine if reliance *should* be required in *any* private actions under the Rule. [Emphasis petitioners'.]

The petitioners attempt to support this position by citing several cases and authorities which contain language to the effect that reliance or causation are not elements which must be proven in suits brought under Rule 10b-5. Petitioners argue that to rule otherwise would restrict the courts from providing the necessary benefits to the public that 10b-5 was intended to provide.

While petitioners seem to recognize the need for limits to liability (petitioners' brief p. 28), they fail to provide any meaningful standards by which the courts may properly limit the application of the Rule. In fact, the petitioners urge an abandonment of two of the most useful tools for this purpose, reliance and causation,[2]

[2]The 10th Circuit, in its opinion below, intimated that reliance and causation are separate elements. The 2nd Circuit suggests that the test of reliance in non-disclosure cases is "causation in fact." *Chasins v. Smith, Barney & Co.*, 438 F.2d 1167 (2d Cir., 1970); *Crane Co. v. Westinghouse Air Brake Co.*, 419 F.2d 787 (2d Cir., 1969).

resulting in a standard approaching that of strict liability. It is submitted that such a position is erroneous and that an examination of the types of cases typically brought under Rule 10b-5 should result in the adoption by this Court of a useful, if somewhat pragmatic, standard employing the concepts inherent in the doctrine of reliance.

It certainly comes as no surprise to this Court that there are many seemingly contradictory statements in the myriad cases involving the issue of what must be established in order to prove a violation of Rule 10b-5, and particularly whether reliance is an element. Some of the language comes from cases interpreting other analogous Securities Law provisions, such as §14(a) of the '34 Act, which are discussed by petitioners.

First, there are those cases which state that the technical elements of common law fraud need not be shown, e.g., *Securities and Exchange Commission v. Capital Gains Research Bureau,* 375 U.S. 180 (1963) (a violation of the *Investment Advisors Act of 1940* (15 U.S.C. §80b-1 *et seq.*)); *Douglass v. Glen E. Hinton Investment, Inc.,* 440 F.2d 912 (9th Cir., 1971) (a Rule 10b-5 case). Second, there are those cases which state that reliance or causation are not necessary elements which need be shown (*Mills v. Electric Auto-Lite Company,* 396 U.S. 375 (1970) (a violation of §14(a) of the '34 Act), *Kahan v. Rosentiel,* 424 F.2d 161 (3rd Cir., 1970) *cert. denied,* 398 U.S. 950 (1970) (a Rule 10b-5 case). Third, there are those cases which indicate that reliance or causation remains a necessary element of a cause of action for violation of the Securities laws, *Mitchell v. Texas Gulf Sulphur,* .... F.2d ...., CCH Fed.Sec.L.Rep. ¶93,019 (10th Cir., April 26, 1970) (a Rule 10b-5 case); *S.E.C. v. Texas Gulf Sulphur,* 401

F.2d 833 (2d Cir., 1968) (a Rule 10b-5 case); *Clement A. Evans & Co., Inc. v. McAlpine,* 434 F.2d 100 (5th Cir., 1970) (a Rule 10b-5 case); *Chasins v. Smith, Barney & Co.,* 438 F.2d 1167 (2d Cir., 1970) (a Rule 10b-5 case; *Horwitz v. Panhandle Eastern Pipeline Company,* et al, 438 F.2d 53 (10th Cir., 1971) (a Rule 10b-5 case).

Not all of the cases can be satisfactorily reconciled, but there emerges enough of a pattern to suggest to this Court the kind of a test which will work. In the first type of case mentioned above it is clear that a holding that all the elements of common law fraud need not be shown does not neecssarily mean that reliance or causation need *not* be shown and the cases in which these statements appear should not be so interpreted. It is in the second and third types of cases that crucial factual distinctions must be ascertained. Typically in those cases where reliance has been deemed not necessary, there was involved a fact situation with multitudinous plaintiffs (usually a stockholder's derivative action) or an omission of a material fact, or both. As noted in *Mills, supra,* 396 U.S. at 382, fn. 5, in those cases where large numbers of plaintiffs are involved or a material omission is the culprit complained of, a showing of reliance would be impossible. As a result, in order to provide members of a class with meaningful relief the courts have permitted the concept of reliance to merge into the concept of materiality. Thus, if the claimed misrepresentation involves a material fact and proof of reliance is difficult, the very materiality of the fact presumes reliance.

Such a conclusion is a fair inference from the language of this Court in *Mills v. Electric Auto-Lite Company,* 396 U.S. 375, at 384-5 (1970):

> Where the misstatement or omission in a proxy statement has been shown to be "material," as it was found to be here, that determination itself indubitably embodies a conclusion that the defect was of such a character that it might have been considered important by a reasonable shareholder who was in the process of deciding how to vote. This requirement that the defect have a significant *propensity* to affect the voting process is found in the express terms of Rule 14a-9, and it adequately serves the purpose of ensuring that a cause of action cannot be established by proof of a defect so trivial, or so unrelated to the transaction for which approval is sought, that correction of the defect or impostion of liability would not further the interests protected by §14(a). [Emphasis the Court's.][3]

It is submitted that there is another meaningful method of categorizing the cases based upon the standing of the plaintiff and the relief sought. One group of cases arises out of those situations where the Securities and Exchange Commission, or other regulatory body, is taking action to enforce its rules and there a mere showing of the technical breach of the statute or the rules justifies the imposition of the sanctions, which is usually an injunction (e.g., *SEC v. Capital Gains Research Bureau, supra*), but which may also involve other relief. (*SEC v. Texas Gulf Sulphur, supra*). Another group of cases arises out of those situations where the plaintiff is a private party, the remedy sought will benefit or affect the entire class of persons and relief will take the form of a declaratory judgment or an injunction (e.g., *Mills*

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[3] *Kahan v. Rosentiel*, 424 F.2d 161 (3d Cir., 1970) interprets this same language as authority for the proposition that reliance is not an independent element which must be established to prove a cause of action under Rule 10b-5. It is submitted that this was error if the element of reliance is deemed to have merged with materiality in the types of fact situations involved in *Mills* and *Kahan*, as is argued here.

v. Electric Auto-Lite Co., supra). However, in the group of cases such as the one now before the Court, where plaintiff seeks relief in the form of damages and he is the one who claims to have been injured by the alleged violation of the Rule by the defendant, he then should be obligated to show reliance and causation in order to recover, because a mere showing of a violation of the Rule would be meaningless without a causal connection.

In those cases where proof of reliance is within the reach of plaintiffs, the courts have continued to apply that requirement. In *Mitchell v. Texas Gulf Sulphur*, ... F.2d ...., CCH Fed.Sec.L.Rep. ¶93,019 (10th Cir., April 26, 1970), three plaintiffs sued Texas Gulf Sulphur for violation of Rule 10b-5 based upon a misleading press release. The trial court granted judgments in favor of all three, but the Court of Appeals reversed as to one of the plaintiffs who sold five days after a correcting press release was issued, ruling that he had no right to rely on the first release when the corrective release had been issued.

And in a related case arising out of the same factual situation, the Second Circuit stated (*SEC v. Texas Gulf Sulphur*, 401 F.2d 833 at 860 (2d Cir., 1968)):

> Therefore it seems clear from the legislative purpose Congress expressed in the Act, and the legislative history of Section 10(b) that Congress when it used the phrase "in connection with the purchase or sale of any security" intended only that the device employed, whatever it might be, be of a sort *that would cause reasonable investors to rely thereon*, and, in connection therewith, *so relying*, cause them to purchase or sell a corporation's securities. . . . [Emphasis supplied]

See also *Clement A. Evans & Co., Inc. v. McAlpine, supra.*

If the foregoing rationale is valid, what of the situation where there are multitudinous plaintiffs all claiming damages from a single act on the part of a single defendant, such as in the *Texas Gulf Sulphur* case? It is suggested that this problem is not as difficult as it seems. In the first place, once the defendant is found to have violated the Rule, it is still necessary for each member of the class of plaintiffs to make a showing of the damages he suffered before any recovery is allowed, and, indeed, before the extent of the defendant's liability for damages can be ascertained. Rule 23 of the Federal Rules of Civil Procedure, whereby interrogatories can be submitted to members of the class to be answered under oath, gives the Court the method of determining damages suffered by each member of the class. In that same set of interrogatories the Court can also require each member of the class to present the necessary facts to prove reliance and causation. It would be difficult to imagine that the Court would award damages to a class of plaintiffs without requiring a showing on the part of each member of the class that he was entitled to compensation. It does not seem administratively burdensome to require some showing of reliance in the same manner as courts require a showing of damages.

As Rule 10b-5 cases continue to be brought by individuals and as those individuals seek the relief of damages, the elements of reliance and causation must remain as part of the requirements of proving a cause of action. A rule otherwise would remove any incentive for a person to exercise due diligence for his own protection when entering the securities market place.

In summary, then, it is suggested that there are good reasons for retaining the doctrines of reliance or causation, and that because of those reasons the concepts have not actually been rejected by the courts, although sometimes language in the opinions would seem to indicate otherwise. It is further suggested that in those cases where money damages are not sought and the proof of reliance is so difficult as to be virtually impossible (such as where there has been an omission of a material fact), the courts should examine the materiality of the facts involved. In the event such facts are deemed to be material, then reliance should be presumed and the concept of reliance would then be deemed to have merged into and become a part of the concept of materiality. Also, in those cases where the relief sought is other than money damages, perhaps the degree of proof of reliance can be minimized or also deemed merged into the concept of materiality.

However, in those cases where plaintiffs seek damages, reliance should continue to be an element of proof. Particularly in cases such as this one before the Court, plaintiffs should be required to show that they relied upon any misrepresentations made by defendants, or any of them, and that such misrepresentations were the cause of their losses. The Court of Appeals, in so ruling, should be affirmed.

POINT III.

THE MEASURE OF DAMAGES AS DEFINED BY THE COURT OF APPEALS WAS PROPER AND IN ACCORDANCE WITH PREVAILING LAW.

Petitioners argue that assets owned by the UDC are of such value as to make each share of UDC stock worth in excess of $28,000 and that the damages awarded should be the difference between that figure and the

price at which plaintiffs sold their stock. The trial court termed the claimed valuation of $28,000 "speculative" (A. 530), which it certainly is.

While the petitioners spent a great deal of time at trial attempting to produce evidence of the value of mineral reserves on the Indian lands in the form of oil, gas, oil shale, and coal, hoping to establish thereby that the UDC shares had astronomical value, the fact of the matter is that up to and including the time of trial, there were *no* oil leases on the reservation or on the Indian lands and the tribe had received no proceeds from oil shale (A. 417). The testimony of petitioners' witness, Clarence I. Justheim, was to the effect that at the present time oil shale in the ground or removed by ordinary mining processes was not worth "four cents", until the process for its commercial use by atomic methods had been developed economically, and this would require millions of dollars (A. 375). There were no oil shale leases on Indian lands because no one had shown enough interest to apply for one (A. 417). As far as coal was concerned, there was one coal lease on which a $200 a year advance rental had been paid, but there had been no production of coal on the Indian lands in recent history (A. 417). The trading value of the shares certainly considered the speculative nature of the assets of UDC and discounted the values testified to by petitioners' witnesses.

If the decision of the Court is to transfer the assets of UDC to the AUC, the matter should rest there, as all of the UDC stock acquired from the plaintiffs would immediately be worthless and the plaintiffs, as members of AUC, would have their interest restored. Surely no further damages should be inflicted.

On the other hand, if the relief requested by petitioners in the AUC case is denied, then the measure of damages should be as defined by the Court of Appeals below, 431 F.2d 1337 at 1348:

> "The measure of damages for breaches of duty under Regulation 10b-5 is the profit made by the defendant on resale of stock purchased from the plaintiffs. If no resale was made or if the resale was not at arm's length, then the measure is the prevailing market price at the time of the purchase from the plaintiffs

There is virtually no authority to the contrary, and petitioners have cited none. The measure of damages adopted in Rule 10b-5 cases has been the difference between the value of the securities on the date of sale and the amount received for them. *Estate Counseling Service, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 303 F.2d 527 (10th Cir., 1962) and *Janigan v. Taylor*, 344 F.2d 781 (1st Cir., 1965) *cert. denied* 382 U.S. 879 (1965). The later case of *Esplin v. Hirschi*, 402 F.2d 94 (10th Cir., 1968) *cert. denied* 394 U.S. 928 (1969) modified the rule only slightly by measuring the damages as the difference between the amount paid for the security and the value of the securities on the day the plaintiff discovered his cause of action, as distinguished from the date of sale. The Court of Appeals in *Mitchell v. Texas Gulf Sulphur, supra,* computed damages on the basis of the difference between the price at which plaintiffs sold their stock and the price at which they could have reacquired those shares after learning the true facts, assuming reasonable diligence on the part of each plaintiff.

As indicated, the value of the shares should be the price at which the shares were being traded, and not

the "speculative" value claimed by petitioners. Petitioners argue that the trading price of the shares is not a fair value, because the defendants were manipulating the market. This claim is without merit. As noted earlier, of the total of 1,387 shares of UDC stock sold by the mixed bloods, Haslem bought only fifty and Gale and Haslem together purchased 113 (8-1/3% of the total) (A. 523).

It seems obvious that the activities of Gale and Haslem, whether considered separately or together, did not constitute a manipulation. In order for a manipulation to exist, the parties must either trade in, or be prepared to trade in, an extensive amount of stock in relation to the total on the market. *In the Matter of Halsey, Stuart & Co., Inc.*; 30 SEC 106 (1949); *In the Matter of Adams & Co., Bennett, Spanier & Co., Inc. and Haas*, 33 SEC 444 (1953); *Volkart Bros., Inc. v. Freemen*, 311 F.2d 52 (5th Cir., 1962). In the latter case, the Court held that a manipulation had not existed because there was no *intent* to manipulate, even though the defendants had cornered the cotton market for one day. It is difficult to see how the defendants, either jointly or severally, affected the market price of the UDC stock. They certainly did not manipulate the stock price.

Further evidence of this is found in the fact that in those instances where Gale or Haslem *sold* shares, the prices received by them were in the same range as shares were being generally traded. If they were "manipulating" the market, it was not to their advantage.

Accordingly, upon remand, the trial court should be instructed to apply the measure of damages as set forth by the Court of Appeals and quoted above.

CONCLUSION

It is respectfully submitted that, so far as the claims of petitioners against the Bank, Gale and Haslem are concerned, the facts of the various transactions before the Court do not justify the final resolution at this time of admittedly very difficult concepts of law. In any event, Haslem's connection with the transactions complained of are virtually *de minimus* and he should have his liability determined accordingly. The Court of Appeals below recognized this case for what it is and its opinion should be upheld.

Respectfully submitted,

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Appendix "A"

SUMMARY OF TRANSACTIONS INVOLVING TWELVE "BELLWETHER" PLAINTIFFS (from Trial Court's Findings of Fact)

NAME	SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS) No. of Shares	Date of Sale	Price Per Share*	Buyer	SHARES RESOLD BY PURCHASERS No.	Date of Resale	Price Per Share	Buyer	NAME OF PERSON WHO WAS Notary Public on Affidavit	Signature Guarantor	Comme
Glen Y. Reed (A.475-6)	5	7- 8-64	$350	Gale	5	8-25-64	$530	M/M Phelps Arizona	Gale	Gale	Haslem took no pa
	5	8-31-64	400	Haslem	5	8-31-64	Not Shown	Rob't Shaw Illinois	NR	Haslem	Nothing in record i lem made any p transaction.
Fred Larose Burson (A.476-8)	6	11- 6-63	416⅔	R. Earl Dillman					Dick Bastian	Gale	Haslem had nothi the negotiations, re from sale.
	4	2- 6-64	500	Jack Turner					Gale	Gale	Haslem had nothi the negotiations, re from sale.
Letha Harris Wopsock (inherited 5 plus her own 10) (A.478-81)	5	8- 1-63 11- 4-63	500	Clyde Murray					Gale	Gale	Haslem had nothi the negotiations, re from sale.
	2	2-24-64	700	Bill Hoopes (Trading Post)					Not Shown	Gale	Haslem had nothi the negotiations, re from sale.
	3	8-28-64	333	Bill Hoopes					NR	Gale	Haslem had nothi the negotiations, re from sale.
	3	After 8-27-64	350	Gale as Agent	3	Not Shown		Norval R. & Fern Johnson	NR	Haslem	Halsem took no other than to guara
	1	10- -64	400	Gale					NR	Not Shown	
	1	11- 3-64	350	Gale					NR	Not Shown	Haslem took no p

*As set forth in the offer to the Ute Tribe, where such an offer was made.
NR—Affidavits were not required because the sale occurred after Angust 27, 1964.

Append

Appendix "A"

SUMMARY OF TRANSACTIONS INVOLVING TWELVE "BELLWETHER" PLAINTIFFS
(from Trial Court's Findings of Fact)

	SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS)				SHARES RESOLD BY PURCHASERS				NAME OF PERSON WHO WAS		
	No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comment
	5	7- 8-64	$350	Gale	5	8-25-64	$530	M/M Phelps Arizona	Gale	Gale	Haslem took no part in sale.
	5	8-31-64	400	Haslem	5	8-31-64	Not Shown	Rob't Shaw Illinois	NR	Haslem	Nothing in record indicates Haslem made any profit on this transaction.
urson	6	11- 6-63	416⅔	R. Earl Dillman					Dick Bastian	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
	4	2- 6-64	500	Jack Turner					Gale	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
Wopsock lus her	5	8- 1-63 11- 4-63	500	Clyde Murray					Gale	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
	2	2-24-64	700	Bill Hoopes (Trading Post)					Not Shown	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
	3	8-28-64	333	Bill Hoopes					NR	Gale	Haslem had nothing to do with the negotiations, received nothing from sale.
	3	After 8-27-64	350	Gale as Agent	3	Not Shown		Norval R. & Fern Johnson	NR	Haslem	Halsem took no part in sale other than to guarantee signature.
	1	10- -64	400	Gale					NR	Not Shown	Haslem took no part in sales.
	1	11- 3-64	350	Gale					NR	Not Shown	

the offer to the Ute Tribe, where such an offer was made.
s were not required because the sale occurred after Angust 27, 1964.

NAME	SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS) No. of Shares	Date of Sale	Price Per Share*	Buyer	SHARES RESOLD BY PURCHASERS No.	Date of Resale	Price Per Share	Buyer	NAME OF PERSON WHO WAS Notary Public on Affidavit	Signature Guarantor	Comme
Louise Allen Case (A.481-4)	5	11- 6-63	500	LaVere Labrum (Lynn Labrum & Marion Labrum, 3 shs; Lloyd Labrum & Oleta Labrum, 2 shs)					Gale	Gale	Haslem took no pa
	3	5- 7-64	500	Richard Murray	3	5- 7-64	700	Tillie L. Cullstrom & Laura J. Wood Mason, Ill.	Gale	Gale	Haslem took no sale.
	2	6-29-64	500	Dick Bastian					Dick Bastian	Not Shown	
Melvin Reed (A.484-6)	10	3-11-64	650	Richard Murray					Gale	Gale	Haslem took no p
Marguerite Murray Hendricks (A.486-9)	5	11- 5-63	700	Clyde R. Murray					Jerry M. Murray	Gale	Haslem took no p
	5	2-18-64	700	Richard Murray					Gale	Gale	Haslem took no p
Joseph Arthur Workman (A.489-91)	6	2-10-64	500	Robert Huish					Gale	Gale	Haslem took no p
	1	11-27-64	350	Haslam (for Acel Haslem)					NR	Not Shown	Nothing in the r Haslem made any transaction.
Leonard Richard Burson (A. 491-2)	10	11- 6-63	500	LaVere Labrum (Lloyd & Oleta Labrum, 5 shs; Lynn & Marion Labrum, 5 shs)					Gale	Gale	Haslem took no p

*As set forth in the offer to the Ute Tribe, where such an offer was made.
NR—Affidavits were not required because the sale occurred after Angust 27, 1964.

	SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS)				SHARES RESOLD BY PURCHASERS				NAME OF PERSON WHO WAS		
	No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comment
ase	5	11- 6-63	500	LaVere Labrum (Lynn Labrum & Marion Labrum, 3 shs; Lloyd Labrum & Oleta Labrum, 2 shs)					Gale	Gale	Haslem took no part in sale.
	3	5- 7-64	500	Richard Murray	3	5- 7-64	700	Tillie L. Cullstrom & Laura J. Wood Mason, Ill.	Gale	Gale	Haslem took no part in either sale.
	2	6-29-64	500	Dick Bastian					Dick Bastian	Not Shown	
	10	3-11-64	650	Richard Murray					Gale	Gale	Haslem took no part in sale.
urray	5	11- 5-63	700	Clyde R. Murray					Jerry M. Murray	Gale	Haslem took no part in sale.
	5	2-18-64	700	Richard Murray					Gale	Gale	Haslem took no part in sale.
	6	2-10-64	500	Robert Huish					Gale	Gale	Haslem took no part in sale.
	1	11-27-64	350	Haslam (for Acel Haslem)					NR	Not Shown	Nothing in the record indicates Haslem made any profit on this transaction.
rd	10	11- 6-63	500	LaVere Labrum (Lloyd & Oleta Labrum, 5 shs; Lynn & Marion Labrum, 5 shs)					Gale	Gale	Haslem took no part in sale.

the offer to the Ute Tribe, where such an offer was made.
were not required because the sale occurred after Angust 27, 1964.

NAME	SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS) No. of Shares	Date of Sale	Price Per Share*	Buyer	SHARES RESOLD BY PURCHASERS No.	Date of Resale	Price Per Share	Buyer	NAME OF PERSON WHO WAS Notary Public on Affidavit	Signature Guarantor	Comme
ran F. Curry	1	2-14-64	700	John Chasel					Gale	Gale	Haslem took no p
	1	2-19-64	700	Orin Swain					Gale	Gale	sale.
(A.492-4)	3	3-24-64	700	Clyde R. Murray					Gale	Gale	Halsem took no pa
	2	8-18-64	600	Dick Bastian					Irene K. Ruppel	Gale	Halsem took no pa
	1	10-23-64	300	Dick Bastian					NR	Haslem	Haslem took no pa
	1	12- 4-64	300	Dick Bastian					NR	Haslem	except as a signat
	1	1- 4-65	300	Dick Bastian					NR	Haslem	and received noth
tewart Eugene eed (A.495-6)	5	10- -63	500	Clyde R. Murray					Gale	Gale	Haslem took no pa
	5	2-21-64	500	Wallace A. Davis					Haslem	Haslem	Haslem took no p cept as a notary nature guarantor nothing therefrom
ichard R. Curry, r. (A.496-8)	5	11- 6-63	700	Clyde R. Murray					Jerry Murray (Clyde's son)	Gale	Haslem took no p
	3	9- 2-64	350	Richard Murray					NR	Not Guaranteed	Haslem took no p
	2	9-14-64	400	Gordon E. & Clara Mae Harmston					NR	Gale	Haslem took no p
Charles T. Reed (A.498-9)	10	10- 5-64		Richard Murray	10	Not Shown		Benjamin T. Shaw Trust Dixon, Ill.	NR	Gale	Haslem took no p

Appe

*As set forth in the offer to the Ute Tribe, where such an offer was made.
NR—Affidavits were not required because the sale occurred after August 27, 1964.

SHARES SOLD BY MIXED BLOODS (BELLWETHER PLS)				SHARES RESOLD BY PURCHASERS				NAME OF PERSON WHO WAS		
No. of Shares	Date of Sale	Price Per Share*	Buyer	No.	Date of Resale	Price Per Share	Buyer	Notary Public on Affidavit	Signature Guarantor	Comment
1	2-14-64	700	John Chasel					Gale	Gale	Haslem took no part in either sale.
1	2-19-64	700	Orin Swain					Gale	Gale	
3	3-24-64	700	Clyde R. Murray					Gale	Gale	Halsem took no part in sale.
2	8-18-64	600	Dick Bastian					Irene K. Ruppel	Gale	Halsem took no part in sale.
1	10-23-64	300	Dick Bastian					NR	Haslem	Haslem took no part in any sale, except as a signature guarantor, and received nothing therefrom.
1	12- 4-64	300	Dick Bastian					NR	Haslem	
1	1- 4-65	300	Dick Bastian					NR	Haslem	
5	10- -63	500	Clyde R. Murray					Gale	Gale	Haslem took no part in sale.
5	2-21-64	500	Wallace A. Davis					Haslem	Haslem	Haslem took no part in sale except as a notary public and signature guarantor and received nothing therefrom.
5	11- 6-63	700	Clyde R. Murray					Jerry Murray (Clyde's son)	Gale	Haslem took no part in sale.
3	9- 2-64	350	Richard Murray					NR	Not Guaranteed	Haslem took no part in sale.
2	9-14-64	400	Gordon E. & Clara Mae Harmston					NR	Gale	Haslem took no part in sale.
10	10- 5-64		Richard Murray	10	Not Shown		Benjamin T. Shaw Trust Dixon, Ill.	NR	Gale	Haslem took no part in sale.

he offer to the Ute Tribe, where such an offer was made.
were not required because the sale occurred after Angust 27, 1964.